

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

LATAWYNE DEWRIGHT OSBORNE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No.: 3:06-cr-110
3:09-cv-070
3:09-cv-132
(VARLAN/GUYTON)

MEMORANDUM OPINION

Petitioner has filed two motions to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. Although petitioner filed the first § 2255 motion on February 17, 2009, he was not sentenced until February 20, 2009, and the judgment of conviction was not entered until February 24, 2009. Petitioner then filed his notice of appeal on March 3, 2009. On March 26, 2009, petitioner filed his second § 2255 motion.

Absent extraordinary circumstances, a district court is precluded from entertaining a § 2255 motion while a direct appeal from the same conviction is still pending. *Capaldi v. Pontesso*, 135 F.3d 1122, 1124 (6th Cir. 1998). This case presents no extraordinary circumstances compelling district court review at this time. Accordingly, the motions to vacate, set aside or correct sentence will be **DENIED** and these actions **DISMISSED**.

Petitioner has also filed a motion to proceed *in forma pauperis* in the district court, which will be **DENIED** as **MOOT**.

AN APPROPRIATE ORDER WILL ENTER.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE